

United States District Court  
Southern District of Texas  
FILED

JUN 20 2005

Michael N. Milby, Clerk  
Laredo Division

United States District Court  
Southern District of Texas  
ENTERED

JUN 20 2005

Michael N. Milby, Clerk  
Laredo Division

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION

UNITED STATES OF AMERICA	*	
	*	
VS.	*	CRIMINAL NO. L-04-917
	*	CIVIL ACTION NO. L-05-141
JORGE LUIS VIDAL-VASQUEZ	*	

MEMORANDUM

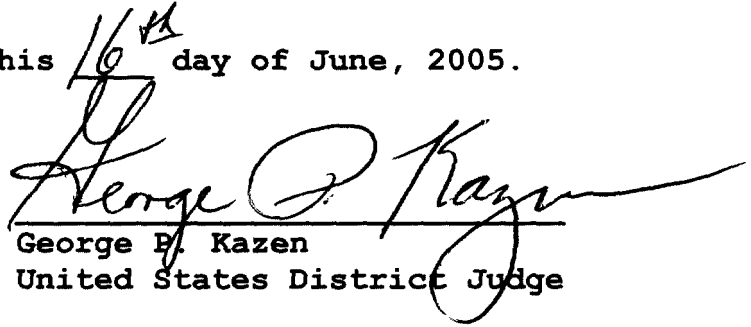
This Defendant has filed a \$2255 motion attacking his 2004 conviction for illegal return after deportation. Defendant was sentenced on September 9, 2004. He took an appeal to the Fifth Circuit. That court dismissed his appeal for a want of prosecution on November 29, 2004.

The instant motion invokes the Supreme Court decision United States v. Booker, 125 S.Ct. 738 (2005). The Fifth Circuit has held that Booker is not retroactive. In re Elwood, --F.3d--, 2005 WL 976998 (5th Cir. 2005). Accordingly, Booker does not afford any relief to this Defendant.

Likewise, Defendant contends that the constitutional question in Almendarez-Torres v. United States, 523 U.S. 224 (1998) was incorrectly decided. However, only the Supreme Court can overrule that decision and it has not done so. Unless and until it does, the decision remains binding on this Court.

This motion has no merit and must be DISMISSED.

DONE at Laredo, Texas, this 16<sup>th</sup> day of June, 2005.



George P. Kazen  
United States District Judge